IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1066 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ILUMUDIN N D MAKRANI

Versus

BHILL BAI DALKI WD/O MITHUBHAIPARSING PARMAR

Appearance:

1. First Appeal No. 1066 of 1984
MR PV NANAVATI for Petitioner No. 1-3
MR RN SHAH for Respondent No. 1-4

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 18/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. Nanavati for the appellant and Mr. R.N.Shah, learned advocate for the respondents. By way of this appeal, the appellant insurance company has challenged the award made by the Tribunal in Motor Accident Claim Petition No. 50 of 1983 dated 28th September, 1983 wherein the tribunal has held that the petitioners do recover from the respondents jointly and severally an amount of Rs.1,08,000.00 with interest at the rate of 6 per cent per annum from the date of the claim petition till realization with proportionate costs of the claim petition and the rest of the claim of the claimants was dismissed by the tribunal.

During the course of hearing, learned advocate Mr. Nanavati for the appellant insurance company has submitted that the tribunal has committed gross error in deducting 1/5th share as personal expenses of the deceased. He has also submitted that the tribunal has committed gross error in applying multiplier of 20 looking to the age of the deceased, 23 years, at the time of accident. He has also submitted that the tribunal has committed gross error in coming to the conclusion that the loss of dependency per month would be at the rate of Rs.400.00.

While supporting the award made by the tribunal, learned advocate Mr. R.N. Shah has submitted that at the relevant time, the tribunal was accepting the higher multiplier in case of accidental death of a young person. He has also submitted that looking to the minor children, petitioners no.2 and 3 and the age of the widow of 23 years, the tribunal was right in applying multiplier of 20 and, therefore, this appeal is required to be rejected.

We have considered the submissions made by the learned advocates. We have also perused the award made by the tribunal. The tribunal has given reasons in para 7 of the award. In light of the contentions raised by Mr. Nanavaty, reasons given by the tribunal in para 7 of the award are required to be appreciated.

Before the tribunal, claimant no.1 has deposed on oath that her husband was working as a conductor in the truck. This fact was also admitted and not disputed by the opponents before the tribunal. The deceased was doing the work of driving but the driving licence of the deceased was not produced before the tribunal. The wages received by the deceased were of Rs.400.00 per month and

he was also getting Rs.15.00 per day as Bhattha/Allowance as deposed by the claimant no.1 in her oral evidence before the tribunal. In his written statement, opponent no.2 has also admitted that the deceased was getting the salary of Rs.150.00 and Rs.5.00 per day as Bhattha. Opponent No.2 has not stepped in the witness box but from the evidence and the circumstances of the case, the tribunal has has come to the conclusion as to what could be the income of the deceased and has accordingly assessed the income of the deceased at Rs.450.00 per month [300.00 per month plus monthly Bhatha of Rs.150.00 at the rate of Rs.5.00 per day]. Before the tribunal, certain documents were produced by the claimant no.1 to show that the deceased was also doing the agricultural work. Extracts of the village form no.7/12 were produced before the tribunal However, as they were not the certified copy, same were not considered by the tribunal and in view of this evidence on record, the tribunal has come to the conclusion that in all, the deceased was receiving Rs.450.00 per month and after considering the future prospects, the tribunal assessed the income of the deceased at Rs.550.00 per month. The tribunal has also considered the number of persons in the family of the deceased, one widow and two minor children and father and in view of that, the tribunal considered that the loss of dependency would be of Rs.400.00 p.m. and out of this amount, the tribunal held that the loss of dependency for widow claimant no.1 would be of Rs.150.00 p.m.; for two minor children, loss of dependency would be of Rs.100.00 p.m. and Rs.50.00 p.m. for the father of the deceased . Thereafter, the tribunal has considered the PM Report of the deceased and on that basis, has come to the conclusion that the age of the deceased was of 23 years at the relevant time and considering the age of the widow of 23 years, age of the father 43 years as well as the age of two minor children, the tribunal has applied the multiplier of 20 for claimants no.1 to 3 and 15 for the aged father and on that basis, the tribunal come to the conclusion that the loss of dependency for claimant no.1 widow would be of Rs.36,000.00; Rs.48,000.00 for claimants no. 2 and 3 (Rs.24000 + Rs.24,000/-) and Rs.9000.00 for the father. To that, the tribunal added Rs.1668.00 towards loss of expectation of life and Rs.3334.00 towards pain shock and sufferings qua claimant no.1 widow and Rs. 1666.00 towards loss of expectation of life and Rs. 3333.00 towards pain shock and sufferings qua claimant no.2 and 3 and thus, total amount of compensation arrived at by the tribunal was of Rs.1,08,000.00.

We have perused the award made by the tribunal.

We have also considered the submissions made by Mr.Nanavati. We are of the view that the tribunal has rightly assessed the income of the deceased on the basis of the fact that the deceased was working as cleaner and was also working in the agricultural field but the tribunal has considered the income of the deceased at Rs.300.00 plus Bhattha of Rs.5.00 per day which come to Rs. 450.00 on the basis of the legal evidence before it and has rightly deducted 1/5th amount from the said income being personal expenses of the deceased because he was required to go out and it would require more money for the deceased. The tribunal has also rightly considered the age of the widow 23 years; age of the father 45 years and two minor children and on that basis, the tribunal has rightly applied the multiplier and has rightly made the award of compensation of Rs.1,08,000.00 only. After all, considering these facts and view of the apex court which is to the effect that under sec.168 of the Motor Vehicles Act, the tribunal has to see whether the just amount of compensation has been awarded by the tribunal or not. In the facts of the present case, we are of the view that the tribunal has rightly assessed the monthly income of the deceased and has also rightly assessed the loss of dependency and has rightly come to the conclusion that the claimants are entitled for total compensation of Rs.1,08,000.00. No error has been committed by the tribunal in making such award in view of the facts of the present case. Therefore, there is no substance in the present appeal and the same is, therefore, required to be rejected.

For the aforesaid reasons, this appeal is dismissed. There shall be no order as to costs.

Dt.18.10.2002. (Kshitij R.Vyas,J.)

(H.K. Rathod,J.)

Vyas